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March 18, 2002

William Caton
Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Application by Verizon New England for Authorization To Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7

Dear Mr. Caton:

This ex parte responds to a number of different questions from staff.

1. As an initial matter, Verizon has demonstrated previously that the UNE rates set by the Vermont Board, and all inputs underlying those rates, are TELRIC-compliant. *See, e.g.*, Declaration filed by V. Louise McCarren, Patrick A. Garzillo, and Michael J. Anglin ("McCarren/Garzillo/Anglin Declaration") ¶¶ 13-22. The Vermont Board conducted a thorough and comprehensive examination of UNE rates, which included review of written testimony, *see id.* ¶¶ 14-15, twelve days of technical hearings, *see id.* ¶ 15, and briefing by participating parties, *see id.* ¶ 16. The Board issued a detailed order addressing pricing issues on February 4, 2000, *see* App. E, Tab 7, and Verizon filed revised cost studies and SGAT pages reflecting the Board's Order. *See McCarren/Garzillo/Anglin Declaration* ¶¶ 18-20. The PSC formally approved these rates on August 23, 2000. *See id.* ¶ 21; App. E, Tab 8.

Just as this is true of the rates set by the Board generally, it is equally true of the switching rates set by the Board. In fact, while this Commission has held that it is appropriate to use a mix of new and growth switch discounts in computing TELRIC rates, the Vermont Board set switching rates based on the assumption of all new switches priced at the deeper discount for new switches. *See February 4 Order* at 24. (App. E, Tab 7.) In other words, the assumptions used by the Vermont Board produced lower costs than would be produced by the assumptions this Commission has previously found to be TELRIC-compliant.

2. Despite this fact, some parties have suggested that the switching rates set by the Vermont Board cannot be relied on because they are somehow too old. Their arguments are misplaced.

First, no party has asked the Board to revisit that rate. In fact, the long distance carriers who now complain about the switching rate chose not to ask the Board to reconsider the rate, chose not to appeal the rate, and chose not to ask the Board to initiate a proceeding to revisit the rate. If the long distance carriers believe it is now timely to revisit those rates, they can petition the Vermont Board to do so. They should not be allowed to challenge that rate for the first time in the context of a section 271 application. *See, e.g.*, Public Notice, *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act* (March 23, 2001) at 5 (requesting that parties ensure that "disputes are brought before and addressed by the relevant state commission prior to" commencement of the section 271 process). In contrast, allowing the long distance carriers to dredge up any rate-related issue they like, no matter how small, would be utterly unworkable. It is simply not practicable to conduct the equivalent of a state rate case in the context of a 90-day 271 review. *See, e.g.*, *AT&T Corp. v. FCC*, 220 F.3d 607, 631 (D.C. Cir. 2000) (noting that "allowing collateral challenges could change the nature of section 271 proceedings from an expedited process focused on an individual applicant's performance into a wide-ranging, industry-wide examination of telecommunications law and policy"). Consequently, the long distance carriers should not be allowed to raise issues here that have not been presented first to the state commissions – the entities who are charged by the Act with setting specific rates to begin with. *See, e.g.*, 47 U.S.C. § 252(c)(2) (giving state commissions the primary role to "establish . . . rates for interconnection, services, or network elements."); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385 (1999) (state commissions are charged with "assur[ing] compliance with the pricing standards in subsection [252(d)]").

Second, the Vermont Board unquestionably followed TELRIC principles and set the switching rates based upon the best information that was available to it at the time. Even if the passage of time has resulted in additional information that could be considered in a new proceeding to review those rates, that does not make the existing rates any less TELRIC compliant. As the D.C. Circuit has held, "[i]f new information automatically required rejection of section 271 applications," such applications "could [never] be approved in this context of rapid regulatory and technological change." *AT&T*, 220 F.3d at 617-18; *see also Rhode Island Order* ¶ 31; *New York Order* ¶ 247. Instead, if the long distance carriers believe they have information that warrants revisiting the Board-set rates, then the appropriate course is to present that information in a petition to the Vermont Board.

In the meantime, however, there is no question that the Vermont Board adhered to TELRIC principles, and its specific rate determinations are entitled to deference. *See, e.g.*, *Kansas/Oklahoma Order* ¶ 59 (The FCC "will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if 'basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.'" (quoting *New York Order* ¶ 244)).

3. AT&T also argues for the first time here that the rates set by the Vermont Board are somehow defective because they assume the use of Lucent 5ESS switches. No party raised this issue during the state TELRIC proceeding. No party raised this issue in an appeal of the TELRIC proceeding. In fact, as noted above, no party appealed *any* part of the Vermont Board's TELRIC proceeding. And no party raised this issue at any time since the Board concluded its TELRIC proceeding, including during the course of the state 271 proceeding. Under these circumstances, this Commission should not even entertain AT&T's arguments on this issue given its utter failure to raise them in the proper forum.

AT&T's criticisms, in any case, are flawed. The Nortel DMS100 digital switch is neither newer, nor better, than the Lucent 5ESS switch. To the contrary, the 5ESS was developed and introduced to the market *after* the DMS100 product, and incorporates a more advanced distributed switching architecture. Moreover, the Lucent 5ESS switches are much better suited for Vermont than Nortel switches due to the rural nature of Vermont. *See Application by Verizon New England For Authorization to Provide In-Region, InterLATA Services in Vermont* at 75-77 (Jan. 17, 2002) (explaining that Vermont is the most rural state in the country). Significantly, Lucent's remote switching capability is far superior than the remote switching capability of the Nortel switch. This capability is critically important to a state like Vermont, which is unusually rural. *See, e.g.*, Reply Brief and Reply Declaration filed by V. Louise McCarren, Patrick A. Garzillo, and Michael J. Anglin ("McCarren/Garzillo/Anglin Reply Declaration") ¶ 8 (noting low line density in Vermont).

In rural areas such as Vermont, Verizon typically deploys a "host" switch housed in a large central office that communicates with "remotes" housed in smaller central offices closer to end users' premises. This architecture is efficient because end users tend to be somewhat dispersed. In such circumstances, without the use of a remote, Verizon would either have to employ very long loops to reach customers or many large "host" central offices that served relatively few end users. Use of a remote allows Verizon to establish smaller "remote" centers that can group end users together. Given the benefits of a host/remote architecture in Vermont, the Lucent 5ESS switch is preferable to other switches. Lucent 5ESS remote switches retain almost all the functionality of a host and therefore can provide all of the same services provided by the host switch. The Lucent 5ESS switch, among other things, can trunk calls directly from remotes. The Nortel DMS switch cannot perform such tasks.

For these reasons, Verizon has deployed Lucent 5ESS switches ubiquitously in the Vermont network – as it has in similar areas throughout its footprint, including New Hampshire, West Virginia, and rural sections of New York – and intends to continue to use Lucent 5ESS switches in these areas for the foreseeable future. In fact, even if Verizon built its entire network from scratch today (which contrary to the CLECs' claims is not the appropriate TELRIC standard), it would still choose to deploy Lucent 5ESS switches in Vermont given the rural nature of the state.

Verizon's exclusive use of Lucent switches in the Vermont cost studies therefore reflects the best forward-looking technology and complies with TELRIC principles. *See generally New York Order* ¶ 244 ("[W]hile TELRIC consists of methodological principles for setting prices,

states retain flexibility to consider local technological [and] environmental … conditions." (internal quotation marks omitted)).

4. Not only do the Vermont rates reflect the use of the most efficient choice of switches and switching architecture, but, contrary to the claims of some parties, they also reflect the benefits of competitive bidding. The switch discounts in Verizon's cost studies, which the Vermont Board dramatically increased to reflect all new switch purchases, were taken from the Lucent contract then in effect across the entire NYNEX region. Verizon's Lucent prices were therefore competitively leveraged by the *total* volume of Verizon business with Lucent throughout this region. And because Lucent knows that it is competing with Nortel and Siemens for Verizon's business in other states that do install Nortel/Siemens switches, Verizon's Lucent prices reflect this competitive bidding.

5. In addition, the Commission can take additional comfort that the rates at issue here are well within the range of reasonableness from the fact that the combined loop and non-loop rates set by the Vermont Board are substantially *lower* (relative to cost) than the newly established New York rates that AT&T and others have argued should be the standard. As Verizon has explained earlier in the proceeding, although CLECs sometimes purchase loops alone, CLECs only purchase non-loop elements in combination with loops. *See McCarren/Garzillo/Anglin Reply Declaration* ¶¶ 46-53. Moreover, the Commission previously has explained that it is appropriate to compare the rates for elements that are purchased together on a combined basis. *See, e.g.*, *Massachusetts Order* ¶ 25. Thus, while it is appropriate to benchmark loops alone -- because they are purchased separately -- non-loop rates can properly be analyzed in combination with loop rates – because they are purchased in combination. *See, e.g.*, *id.* ¶¶ 46-53; *Massachusetts Order* ¶ 25 (explaining rationale for benchmarking various non-loop elements together). And as Verizon has demonstrated, its Vermont loop and non-loop rates combined not only satisfy the benchmark test against the "new" New York rates, but are in fact about 35% lower than the maximum combined rate that would be permitted by such analysis. *See McCarren/Garzillo/Anglin Reply Declaration* ¶¶ 50-52.

6. Installation Factor – With respect to the vintage of data used to calculate engineering, furnished and installed ("EF&I") factors, the cost studies submitted in the state proceedings used 1995 data from its Detailed Continuing Property Record ("DCPR") database to develop these factors. The Vermont Board found that there was *no* "plausible evidence" presented during the TELRIC proceeding "to suggest that the [data on which Verizon's EF&I factor was based] are not representative of expected future costs." *February 4 Order* at 28. (App. E, Tab 7.)

No party has since asked the Vermont Board to reconsider or reopen its decision on this issue. Nor, as noted above, does the fact that there might be additional information available today make the existing rates any less TELRIC compliant. On the contrary, while some inputs used to determine a particular rate may go down over time, others will go up. Again, moreover, the D.C. Circuit recognized that "[i]f new information automatically required rejection of section 271 applications," such applications "could [never] be approved in this context of rapid regulatory and technological change." *AT&T*, 220 F.3d at 617-18. For all the reasons outlined above, therefore, if the long distance carriers believe that there is a reason to revisit this or other

inputs used by the Vermont Board to set the switching rates, then they should include it in a petition to the Vermont Board. They should not be permitted to raise it for the first time in the context of a section 271 proceeding.

7. DUF Rates – Likewise, no party has challenged the rates set by the Vermont Board for the daily usage feed, or DUF, nor have they asked the Board to set new DUF rates. This is true even though the CLECs knew well before the Vermont 271 proceeding that Verizon had proposed lower DUF rates in the New York UNE cost proceeding. Again, as explained above, a CLEC should be not able to raise pricing issues during a 271 proceeding that it did not first raise before the state commission.

Moreover, the rates set by the Vermont Board reflected the best information that was available at the time it conducted its TELRIC proceeding and that decision is entitled to substantial deference. Verizon developed its Vermont DUF rates using data gathered in 1996. These rates reflect the costs of the computer hardware and software required to create the usage information by carrier, and then transmit it to the carrier. To develop these costs, Verizon first identified the steps required to create and transmit usage information, and then used actual measurements and made other assumptions regarding the amount of computer processing needed to perform these steps.

The DUF rates Verizon recently proposed in New York and Massachusetts were developed using essentially the same methodology; however, the estimate of the amount of time required to process a CLEC's request for usage information is now shorter, resulting in lower costs. This merely reflects the fact that additional information is now available based on experience since the rates were initially set. But, as Verizon explained in its Reply Brief, the fact that Verizon's DUF rates are based on data from 1996 is irrelevant to whether the rates are TELRIC-compliant. Reply Brief at 23-24. Nor does the fact that additional information would be available if the Vermont Board reviewed the rates require rejection based on the existing rates. *AT&T*, 220 F.3d at 617-18; *see also Rhode Island Order* ¶ 31; *New York Order* ¶ 247. If CLECs believe that the Vermont rates should now be modified, they should raise that with the Vermont Board. A section 271 application is not the appropriate context for a CLEC to raise for the first time a claim that a rate should be lower.

Moreover, the DUF rates may not be viewed in isolation. The cost of providing other UNEs and services has *increased* – a fact the CLECs conveniently ignore. Thus, it would be inappropriate to require Verizon to lower the DUF rates because costs have decreased, yet keep in place rates for other UNEs and services whose costs have increased.
Finally, the DUF rate that the Commission just approved in the *Rhode Island Order* is almost identical to the rate in Vermont. *See McCarren/Garzillo/Anglin Reply Declaration* ¶ 29.

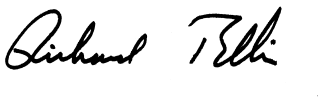
The staff also asked whether the new DUF rates proposed in New York were developed using regionwide data. These rates reflect data from throughout the former Bell Atlantic North (previously "NYNEX") region. The Bell Atlantic South states use a different methodology to develop DUF rates because customer usage information is processed differently in the former Bell Atlantic North and Bell Atlantic South jurisdictions.

8. Busy Hour Assumptions – The following data was used in Verizon's switching cost studies: The total busy hour minutes of use figure in Vermont is 2,518,111. This figure can be found at be found at Column C, line 2 of the "Fixed Loc. Usage STATEWIDE" and "Variable Local STATEWIDE" tabs of the spreadsheet appended hereto as Attachment 1. The total busy day minutes of use -- derived through Verizon's actual observation of a busy hour in a busy day in a busy month, *see McCarren/Garzillo/Anglin Reply Declaration* ¶ 32 -- is 25,181,110. This figure is computed by dividing the total busy hour minutes by the busy-hour-to-day ratio, which, as shown on tab "George EO ANN," Column C, line 1 of Attachment 2, equals 0.10. Finally, the cost per busy-hour minute of use is $0.004003. This number is derived by taking the sum of "Total TELRIC Cost per MOU" ($0.003374), "Total Common Cost per MOU" ($0.000116), and "Total Directly Attributable Joint Cost per MOU" ($0.000768) from lines 3, 6, and 9 of the "Total Loc. Sw. Usage STATEWIDE" tab in Attachment 2, and multiplying the total ($0.004258) by 0.94 to reflect a Board-ordered 6% reduction.

Verizon has previously explained why its busy hour assumptions are TELRIC-compliant. Reply Brief at 23; *McCarren/Garzillo/Anglin Reply Declaration* ¶¶ 30-34. Verizon calculates total minutes of use in the busy hour, and then extrapolates from the busy hour to determine the total annual minutes of use over which it must spread its switch investment costs. Because Verizon's starting point is not an *average* hour but rather a *busy* hour in a *busy* day in a *busy* month, *see id.*, it would be inappropriate to multiply that busy hour usage over *all* days in a year, as that approach would substantially overstate annual usage and, in turn, understate the per-minute cost of switching. Use of 251 days, rather than 365, balances the use of the *busy* hour and results in a more accurate estimate of annual usage. *See id.*

The twenty-page limit does not apply as set forth in DA 02-111. Please let me know if you have any questions.

Sincerely,



cc: J. Veach
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